



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

APPEAL DECISION SUMMARY

APPEAL No: 2010-1914

DECISION DATE: September 9, 2010

OUTCOME: (check one)

☒ X SUSTAINED ☐ REVERSED ☐ REMANDED
☐ INVALID/FULL
☐ SUSTAINED and REMANDED
☐ REVERSED and REMANDED
☐ AGENCY ERROR/OTHER

ISSUE ON APPEAL: Excess resources –Aged, Blind or Disabled (ABD)

GENERAL RULE OF LAW: Standards ABD resource determination:

Conclusions of Law and Policy:

1. United States Code, 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are . . . available to the applicant or recipient.

2. The State plan must specify that . . . in determining financial eligibility of individuals, the agency will apply the cash assistance financial methodologies and requirements, unless the agency chooses to apply less restrictive allowable income and resource methodologies. If the agency chooses to apply less restrictive income and resource methodologies, the State plan must specify the less restrictive methodologies that will be used, and the eligibility groups to which the less restrictive methodologies will be applied. Code of Federal Regulations, 42 CFR §435.601, (f).
3. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. Medicaid Manual, Volume XIII, M1110.001, A (p. 1).

4. Resources are cash and any other personal or real property that an individual owns, or has the power to convert to cash and is not legally restricted from using for his support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B 1 (p. 3).
5. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).
6. The value of any asset that meets the definition of a resource counts against the applicable resource limit, unless otherwise excluded. Medicaid Manual, Volume XIII, S1110.200 (p. 6).
7. Ownership of a dwelling occupied by the applicant as his home does not affect eligibility. An individual's home is property that serves as his or her principal place of residence. A home means the house and lot used as the principal residence and all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. An individual's principal place of residence is the dwelling the individual considers his established or principal home and to which, if absent, he intends to return. It can be real or personal property, fixed or mobile, and located on land or water. Medicaid Manual, Volume XIII, M1130.100, A 1-3 (p. 1).
8. The home exclusion applies to land adjoining the home plot if not completely separated from it by land in which neither the individual nor his or her spouse has an ownership interest. \$5,000 of assessed value of land contiguous to the home lot can be included in the home exclusion. Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot. Medicaid Manual, Volume XIII, M1130.100, C 1 (p. 2).
9. Ownership of other real property generally precludes eligibility. The property's equity value is counted with all other countable resources. One exception to this policy is if the property cannot be sold after a reasonable effort to sell it has been made. Medicaid Manual, Volume XIII, M1130.160, A 1; A 2 (p. 16).
10. Property ceases to be the principal place of residence, and is no longer excludable as the home, as of the date that an individual who has left the home determines that he does not intend to return to it. Such property, if not excluded under another provision, will be included in determining countable resources. Medicaid Manual, Volume XIII, M1130.100, D 1 (p. 3).
11. An institutionalized individual's former residence is an excluded resource for six months beginning with the month following the month of the individual's admission to a medical institution. The following are types of medical institutions:
 - chronic disease hospitals,
 - hospitals and/or training centers for the mentally retarded,
 - institutions for mental diseases (IMDs),
 - intermediate care facilities(ICFs),
 - nursing facilities, and

- rehabilitation hospitals.

After six months the former residence is counted as an available resource. Medicaid Manual, Volume XIII, M1130.100, D 2 (p. 3); M1460.530, A (p. 18a).

12. For real property, the current market value (CMV) or fair market value (FMV) is 100% of the local tax assessed value. The CMV of real property located in Virginia is the tax assessed value of the property. For property located outside of Virginia the CMV is determined by applying the tax assessed value of the property to the local assessment rate, if the rate is not 100%. Medicaid Manual, Volume XIII, M1110.400, A 1 (p. 10); M1130.140, B (p. 13).
13. Real property that an individual has made reasonable but unsuccessful efforts to sell will continue to be excluded for as long as the individual continues to make reasonable efforts to sell it, and including the property as a countable resource would result in a determination of excess resources. This exclusion is effective the first of the month in which the most recent application was filed or up to three months prior if retroactive coverage is required. Medicaid Manual, Volume XIII, M1130.140, A 1 (p. 13).
14. Reasonable effort to sell is considered to have been made:
 - a.) As of the date the property becomes subject to a realtor's listing agreement if, it is listed at current market value, AND the listing realtor verifies that it is unlikely to sell within 90 days of listing;
 - b.) When at least two realtors refuse to list the property. The reason for refusal must be that property is unsalable at the current market value (CMV) (other reasons are not sufficient); or
 - c.) When the applicant has personally advertised his property at or below CMV for 90 days by use of a "Sale by Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, reasonable inquiries with all adjoining land-owners, or other potential interested purchasers.

Medicaid Manual, Volume XIII, M1130.140, B 1 a-c (pp. 13-14).

15. The resource limit for one person in the Categorically Needy, Categorically Needy Non-Money Payment, and Medically Needy covered groups is \$2,000. Virginia Administrative Code, 12VAC30-40-230; Medicaid Manual, Volume XIII, M1110.003, B 2 (p. 2); M1460.500, B 1 (p. 17).
16. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, B 1 (p. 2).

AGENCY DECISION: The hearing officer sustained the action of the agency,
based upon the following:

The Appellant's Representative applied for LTC Medicaid. The Appellant owned a home and contiguous property. The local agency exempted the Appellant's property for six months based on institutionalization. After the expiration of the six months exemption, the local agency determined that the Appellant did not meet any other exemption criteria; therefore, the resources exceeded the limit for full coverage Medicaid. Accordingly, the local agency terminated the Appellant's Medicaid eligibility.

APPLICABLE CITATIONS FOR ACTION:

United States Code

42 U.S.C. §1396a (a)(17)(B)

Code of Federal Regulations

42 CFR §435.601, (f)

Virginia Administrative Code,

12VAC30-40-230

Medicaid Manual, Volume XIII

M0130.200, B 2 (p. 4)

M0130.200, H (p. 8)

M1110.001, A (p. 1)

M1110.003, B 1 & 2 (p. 2)

M1110.100, B, 1, (p. 3)

S1110.200 (p. 6)

M1110.400, A 1 (p. 10)

M1130.100, A 1-3 (p. 1)

M1130.100, C 1 (p. 2)

M1130.100, D 1; D 2 (p. 3)

M1130.140, A 1 (pp. 13)

M1130.140, B; B 1, a-c (pp. 13-14)

M1460.500, B 1 (p. 17)

M1460.530, A (p. 18a)